Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)))	
Access Charge Reform	))	**CC Docket No. 96-262**
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)))	

COMMENTS OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel and pursuant to Section 1.429(f),[2] hereby offers the following comments on selected petitions for reconsideration and/or clarification of the *Seventh Report and Order*, FCC 01-146, released in the captioned proceedings on April 27, 2001. In the *Seventh Report and Order,* the Commission established a new detariffing regime pursuant to which rates assessed by competitive local exchange carriers ("LECs") for interstate switched access services set above certain designated levels would be subject to mandatory detariffing, while charges that fell within the "safe harbor" at

[1] ASCENT is a national trade association comprised of more than 800 entities engaged in, or providing products and/or services in support of, the competitive provision of telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

[2] 47 C.F.R. § 1.429(e).

or below these levels would be deemed just and reasonable, and subject to permissive detariffing. In a corollary action, the Commission held that an interexchange carrier's ("IXC") refusal to serve the customers of a competitive LEC whose switched access charges fell within the designated safe harbor would be unlawful if the IXC served the customers of other LECs, including the incumbent, within the same geographic market.

Seven parties – Qwest Communications International Inc. ("Qwest"), Focal Communications Corporation and US LEC Corp. (collectively, "Focal"), Time Warner Telecom ("Time Warner"), U.S. Telepacific Corporation ("USTC"), TDS Metrocom, Inc. ("TDS"), the Minnesota CLEC Consortium ("Minnesota CLECs"), and the Rural Independent Competitive Alliance ("RICA") -- have sought reconsideration and/or clarification of various elements of the *Seventh Report and Order*. ASCENT will address herein only the petitions filed by Qwest, Focal, and Time Warner. While ASCENT opposes the Qwest petition, it urges the Commission to grant the relief sought by Focal and Time Warner.

Qwest Petition

Qwest urges the Commission to "find that (1) a competitive local exchange carrier ("CLEC") may tariff its access service charges at the total switched access rate of the competing ILEC only to the extent the CLEC itself is providing each of the services necessary to originate and terminate interexchange calls, and (2) any statutory requirement of an IXC to provide long distance service to end users of a CLEC is conditioned on the CLEC timely providing sufficient information to the IXC to allow the IXC to bill the CLEC's end users for the interexchange services provided."[3]

[3] Qwest Petition at 1.

Both requests conflict squarely with the balanced scheme adopted by the Commission for constraining competitive LEC flexibility in pricing interstate switched access service, while at the same time preserving universal connectivity. ASCENT, accordingly, urges the Commission to deny Qwest the relief it seeks.

In establishing its new detariffing regime, the Commission sought to "provide a bright line rule that permits a simple determination as to whether CLEC access charges are just and reasonable, and, at the same time, . . . enable both sellers and purchasers of CLEC access services to avail themselves of the convenience of a tariffed service offering."[4] As the Commission explained, "[s]uch a bright line approach is particularly desirable given the current legal and practical difficulties involved with comparing CLEC rates to any objective standard of 'reasonableness'."[5] Qwest proposes to eliminate the elegant simplicity of the Commission's "bright line approach" by excluding certain component elements of the "rate of the competing ILEC" in computing benchmark competitive LEC switched access charges. In so doing, Qwest would replace "a simple determination" with a source of constant dispute and litigation. Indeed, Qwest would replicate the same contentious process of IXCs declining to pay access charges they believe to be excessive and competitive LECs seeking redress in the courts and before the Commission in an indeterminably debate over which services a given competitive LEC was or was not providing.

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4 *Seventh Report and Order,* FCC 01-146 at ¶ 4.

5 Id. at ¶ 41.

The Commission was aware when it established its new detariffing regime that its benchmarks reflected common industry charges, not carrier-specific rates. Thus, the Commission referred to "certain basic services that make up interstate switched access service offered by most carriers," and the elements which "[s]witched access service typically entails."[6] Moreover, the Commission, recognizing that in contrast to incumbent LECs, competitive LECs confront "substantial network development costs" and "significantly higher per-unit cost[s] of providing service that arise[] from the smaller customer base[s] over which they may spread their operational costs," has attempted to provide competitive LECs with maximum flexibility in setting and structuring their access charges so long as their aggregate charges do not exceed a benchmark ultimately reflective of incumbent LEC charges for services which "make up [the] interstate switched access service offered by most carriers." Surgically removing one access component or another from this calculus is the antithesis of the Commission's flexible cost-recovery scheme for competitive LECs.

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6 Id. at ¶ 55.

Qwest's attempt to condition an IXC's obligation to provide long distance service to end users of a CLEC on the CLEC's timely provision of billing information to the IXC is no more meritorious. Such a precondition would seriously undermine the Commission's efforts to ensure universal connectivity within its new detariffing regime. Initially, the Commission has already concluded that "an IXC that refuses to provide service to an end user of a CLEC charging rates within the safe harbor, while serving the customers of other LECs within the same geographic area, would violate section 201(a)."[7] Accordingly, an IXC's refusal to exchange traffic with a competitive LEC whose access charges are at or below benchmark levels cannot lawfully be conditioned as requested by Qwest. Moreover, Qwest's proposal would work no less "confusion for consumers," no less "disrupt[ion of] the workings of the public switched telephone network," and no less "harm [to] universal service," than the unilateral IXC actions the Commission prohibited in the *Seventh Report and Order*. [8]

Further, the condition Qwest seeks is inconsistent with Commission requirements applicable to the exchange of billing information, and creates the very threat of adverse unilateral actions by large IXCs that the Commission sought to avoid in the *Seventh Report and Order*. While the Commission permits the disclosure of the billing name and address ("BNA") information associated with 10XXX 1+ calls which Qwest seeks, it does not require it.[9] The Commission has concluded that "the risk of fraud . . . is [not] significant enough to justify amending Section 64.1201 to require rather than simply permit BNA disclosure for 10XXX 1+ calls, or for any calls that are

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7 Id. at ¶ 92.

8 Id.

9 47 C.F.R. § 64.1201.

not calling card, third party, or collect calls."[10] Hence, Qwest is seeking to condition the exchange of traffic with individual competitive LECs on the competitive LECs' providing information the Commission does not require them to disclose.

Conditioning an IXC's obligation on a competitive LEC's disclosure of BNA also raises the same concerns raised by a large IXC's unilateral refusal to exchange traffic with a competitive LEC's whose rates it believes to be too high. A large IXC armed with the ability to decline to exchange traffic can dictate the terms of any agreement it enters into with a small competitive LEC. Just as a large IXC can compel a small competitive LEC to set its switched access charges below those charged by the incumbent LEC serving the same area (as is common practice), so too could it dictate the terms of any BNA agreement. If Qwest desires to ensure the delivery of BNA information associated with 10XXX 1+ calls, it should petition the Commission to change its rules to require such delivery, not attempt to secure the sought after information by threatening the universal exchange of traffic among IXCs and competitive LECs that the Commission has sought to preserve in the *Seventh Report and Order*. If Qwest were to so petition the Commission, the Commission could ensure that large carriers were not able to dictate unreasonable terms and conditions for the transfer of BNA information, as they would be able to do if the Qwest petition were to be granted.

Focal and Time Warner Petitions

[10] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (Third Order on Reconsideration), 11 FCC Rcd 6835, ¶¶ 41 - 42 (1996) (*subsequent history omitted*).

Focal and Time Warner both urge the Commission to reconsider its decision to permit competitive LECs "to tariff the benchmark rate for their access services only in the markets where they have operations that are actually serving end-user customers on the effective date of . . . [the new] rules"[11] Both petitioners advocate repeal, or, at a minimum, relaxation, of this restriction, emphasizing the inequities and adverse competitive impacts of its application.

11 *Seventh Report and Order,* FCC 01-146 at ¶ 58.

Seeking to ensure that its transitional benchmark mechanism would not "present[] CLECs with the opportunity to enter additional markets in a potentially inefficient manner through reliance on tariffed access rates above those of the competing ILEC," the Commission "restrict[ed] the availability of the transitional benchmark rate to those metropolitan statistical areas (MSAs) in which CLECs are actually serving end users on the effective date of . . . [the new] rules."[12] Competitive LECs which begin serving end users after that date are permitted "to tariff rates only equivalent to those of the competing ILEC."[13] As Focal and Time Warner point out, however, the rationale for developing the transitional benchmark mechanism applies in many instances with equal force to new, as well as existing, competitive LEC markets.

As the Commission recognized, a "transitional mechanism is vitally important to avoid too great of a dislocation in the CLEC segment of the industry."[14] Indeed, the Commission acknowledged that "unnecessary damage to . . . growing competition . . . likely would result from an immediate transition to the ILEC rate."[15] A transition period, the Commission reasoned, was "necessary to permit CLECs to adjust their business plans and obtain alternative sources for the substantial revenues of which the benchmark will deprive them -- revenues on which they have previously relied in formulating their business plans."[16] While the Commission's assessment is correct, the concerns the transitional benchmark mechanism is intended to address, as Focal and Time Warner demonstrate, are not limited to existing markets.

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12 Id.

13 Id.

14 Id. at ¶ 62.

15 Id.

16 Id.

As couched by Focal, "CLECs are not able to enter new markets overnight."[17] Business plans are developed well in advance of market entry. Implementation of those plans takes months and often years. Regulatory approvals must be obtained. Interconnection agreements must be negotiated and approved by state commissions. Interfaces with the incumbents must be established and tested. Sales offices must be opened and staffed and marketing initiated. And these steps, which generally require upwards to a year when expanding into the territory of a different incumbent, do not contemplate facilities deployment. If switching equipment is to be deployed, facilities must be acquired and installed, collocation arrangements must be secured and collocation space constructed, and interconnection trunks provisioned. In short, the business plans which are now being implemented were likely developed a year or two ago. Just as competitive LECs serving a market need time to adjust their business plans, so too do competitive LECs that have initiated the litany of activities necessary to allow for successful market entry.

Accordingly, ASCENT concurs with Focal and Time Warner that the transitional benchmark mechanism should be extended to all competitive LECs and all markets, avoiding "unnecessary damage" to expanding competitors by allowing them adequate time to adjust their business plans to address the revenue impact of the Commission's new detariffing regime.

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[17] Focal Petition at 8.

Conclusion

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny the reconsideration petition filed by Qwest, and to grant the petitions for reconsideration filed by Focal and Time Warner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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